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IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID H. BUNDY,

Defendant.

Case No. 2:16 MJ 130 PMW

**GOVERNMENT'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
NOTICE OF APPEAL OF
MAGISTRATE'S DETENTION
ORDER**

Judge Paul M. Warner

The United States of America, by and through the undersigned Assistant United States Attorney, respectfully requests that this Court deny the Defendant's request for review of detention pursuant to 18 U.S.C. § 3145(b).

PROCEDURAL HISTORY

The Defendant in the above captioned matter was indicted in the District of Nevada on March 2, 2016, and was arrested in the District of Utah on the following day, March 3. The Defendant appeared before Magistrate Wells on March 4, 2016, for a hearing pursuant to Rule 5(c)(3) of the Federal Rules of Criminal Procedure. At the March 4 hearing, the Defendant waived his right to an identity hearing and admitted that

he was the person named in the indictment. The Government requested that the Defendant be detained, and the Defendant requested that he be released. The matter was set for a detention hearing on March 9, 2016. The Government filed a memorandum in support of detention prior to the hearing and offered evidence by proffer at the hearing. (Dkt. # 10). The Defendant submitted letters from various supportive persons to the court, and offered evidence by proffer at the hearing. After reviewing the submitted materials and hearing evidence and argument from both parties, Magistrate Wells ordered that the Defendant be detained. The Defendant has since been transported to the District of Nevada and is currently awaiting trial in that District. The Defendant has now filed a “Motion for Review of Detention by District Judge.” (Dkt. # 13).

ARGUMENT

The Defendant’s motion for review of Magistrate Wells’ detention order should be denied because this Court lacks the jurisdictional authority to hear such a motion. Jurisdiction over the review of an order of detention resides with the court having original jurisdiction over the offense pursuant to 18 U.S.C. § 3145(b). The “court having original jurisdiction over the offense” has been defined, for purposes of 18 U.S.C. § 3145(b), as the district in which the prosecution is pending. *United States v. Evans*, 62 F.3d 1233, 1237 (9th Cir. 1995). The appropriate forum for a motion for review of detention in this case is therefore the District Court for the District of Nevada.

In the Ninth Circuit case of *United States v. Evans*, defendant Evans was arrested in Arizona for a warrant issued out of the Northern District of West Virginia. 62 F.3d at

1234. Defendant Evans was detained, and sought review of the magistrate's detention order before an Arizona district judge. *Id.* at 1235. The Government moved to dismiss the appeal for lack of jurisdiction, but the Arizona district court judge proceeded with a review of detention and ordered that defendant Evans be released. *Id.* On appeal, the Ninth Circuit held that pursuant to 18 U.S.C. § 3145, when a defendant is arrested outside the district where the indictment was returned, review of a detention order is to be conducted by the district court of the district where the prosecution is pending. *Id.* at 1237. The Ninth Circuit vacated the Arizona district court's order of release. *Id.* Therefore, the Defendant's motion for review of detention in this district should be denied.

Dated this 22nd day of March, 2016.

JOHN W. HUBER
United States Attorney

/s/ Alicia H. Cook
ALICIA H. COOK
Assistant United States Attorney